

1 The Honorable David G. Estudillo
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6 **UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

7 CARL BERKELHAMMER, Individually and
8 on Behalf of All Others Similarly Situated,

9 Plaintiff,

10 v.
11 FUNKO, INC; BRIAN MARIOTTI;
12 RUSSELL NICKEL; KEN BROTMAN;
13 GINO DELLOMO; CHARLES DENSON;
14 DIANE IRVINE; ADAM KRIGER;
15 RICHARD McNALLY; GOLDMAN, SACHS
16 & CO.; J.P. MORGAN SECURITIES LLC;
17 MERRILL LYNCH, PIERCE,
18 FENNER & SMITH INCORPORATED;
19 PIPER JAFFRAY & CO.; JEFFERIES LLC;
20 STIFFEL, NICOLAUS & COMPANY,
21 INCORPORATED; BMO CAPITAL
22 MARKETS CORP.; SUNTRUST
23 ROBINSON HUMPHREY, INC., ACON
24 INVESTMENTS, L.L.C.; and
25 FUNDAMENTAL CAPITAL, LLC,

26 Defendants.

NO. 2:18-cv-00812-DGE

JOINT STATUS REPORT

26 Pursuant to the Court's November 8, 2021 order, Lead Plaintiff Carl Berkelhammer and
27 Defendants Funko, Inc., Brian Mariotti, Russell Nickel, Ken Brotman, Gino Dellomo, Charles
28 Denison, Diane Irvine, Adam Kriger, Richard McNally, Goldman, Sachs & Co. (n/k/a Goldman,
29 Sachs & Co. LLC), J.P. Morgan Securities LLC; Merrill Lynch, Pierce, Fenner & Smith
30 Incorporated, Piper Jaffray & Co., Jeffries LLC, Stifel, Nicolaus & Company, Inc., BMO Capital
31 Markets Corp., and Suntrust Robinson Humphrey, Inc., ACON Investments, L.L.C., and

1 Fundamental Capital, LLC (“Defendants,” and collectively with Lead Plaintiff, the “Parties”)
 2 write jointly to provide a report on the status of the above-captioned matter.

3 As the Court is aware, this case has been stayed in nearly all material respects since April
 4 10, 2019. (See ECF 42 (the “Stay”).) The purpose of the Stay was to allow the adjudication of
 5 the defendants’ motion to dismiss in a state court litigation based on the same nucleus of facts
 6 and putative class claims, captioned *In re Funko, Inc. Sec. Litig.*, No. 17-2-29838-7 SEA (the
 7 “State Case”), and in so doing promote judicial efficiency by permitting the cases to proceed in
 8 parallel. The Stay stayed Defendants’ deadline to answer or move to dismiss the operative
 9 complaint and further provided: “If the motion to dismiss is denied in the State Case and
 10 Defendants elect not to move to dismiss the Amended Complaint, the Federal Case will proceed
 11 in coordinated fashion with the State Case with respect to discovery.” (ECF No. 42 at 3.)

12 The defendants’ motion to dismiss in the State Case was granted on August 5, 2020. (State
 13 Case, Dkt. No. 99.) However, the plaintiffs appealed, and the trial court’s ruling was reversed in
 14 part on November 1, 2021. *In re Funko, Inc. Sec. Litig.*, No. 81811-2-I (Wash. Ct. of Appeals
 15 Nov. 1, 2021).

16 Defendants have until December 1, 2021 to petition the Washington Supreme Court to
 17 hear their appeal of the Court of Appeals decision. Thus, the State Case has not yet been returned
 18 to the trial court for further proceedings.

19 Accordingly, the Parties respectfully request that the Stay be continued, subject to a
 20 further joint status report to be filed on or before December 8, 2021.

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1 Dated this 22nd day of November, 2021.

2 Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was filed electronically with the Court and thus served simultaneously upon all counsel of record, this 22nd day of November, 2021.

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